Supreme Court, U.S.
FILED
OCT 9 1996
CLERK

(4)

No. 96-909

In The

Supreme Court of the United States

October Term, 1996

VERA ARMSTRONG CHERRY,

Petitioner,

vs.

ROCKING HORSE RIDGE ESTATES INC., ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HOLLINS, SCHECHTER & FEINSTEIN
KENNETH C. JONES, Esq., #132740
505 S. Main Street, 12th Flr.
Orange, CA 92668
(714) 558-9119

Attorneys for Respondent, Kay Cantrell

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED[1]

1. Did the District Court have sufficient evidence to rule that, as a matter of law, probable cause was established to subject Petitioner to an involuntary civil commitment pursuant to *California Welfare and Institutions Code* Section 5150?

2. Does *California Welfare and Institutions Code* Section 5150 survive constitutional scrutiny as applied to this case?

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[1] The misleading and confusing nature of the "questions presented" by way of the Petition for Writ of Certiorari warrant opposing party herein to restate the questions in a more cogent fashion.

LIST OF PARTIES TO THE PROCEEDINGS

VERA ARMSTRONG CHERRY

PLAINTIFF-PETITIONER

v.

ROCKING HORSE RIDGE ESTATES ASSOCIATION;
COUNTY OF ORANGE;
KAY CANTRELL; CAROLE LIPINSKI;
UNITED WESTERN MEDICAL CENTER;
ROYALE THERAPEUTIC RESIDENTIAL CENTER;
FIORE, NORDBERG, WALKER & WOOLF-WILLIS;
CINDY SCHALDENBRAND; CARLA MOORE;
AVIVA GOELMAN; STEVE KEISER; AND
R. JOE JENKINS

DEFENDANTS-RESPONDENTS.

OPINIONS DELIVERED IN THE CASE

(1) Memorandum, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT No. 94-56629,(Petitioner's Appendix, Exhibit "A");

(2) Civil Minute Order, Re: Plaintiff's Motion to Amend/Vacate Summary Judgment etc., (Petitioner's Appendix, Exhibit "B"), UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, Case No. SACV-93-00976-LMH(EE);

(3) Civil Minute Order, Re: Defendants' Motions for Summary Judgment (Petitioner's Appendix, Exhibit "C"), UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, Case No. SACV-93-00976-LMH(EE); and

(4) Civil Minute Order, Re: Defendants' Motions to Dismiss (Petitioner's Appendix, Exhibit "D") UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, Case No. SACV-93-00976-LMH(EE).

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

Final judgment of the Court of Appeals was entered on June 14, 1996. The Petition for Writ of Certiorari was filed on September 9, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATUTE INVOLVED

The statute here involved is *California Welfare and Institutions Code* Section 5150, which provides as follows:

> When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.
>
> Such facility shall require an application in writing stating the circumstances under which the person's condition was called to the attention of the officer, member of the attending staff, or professional person, and stating that the officer, member of the attending staff, or professional person has probable cause to believe that the person is, as a result of mental disorder, a danger to others, or to himself or herself, or gravely disabled. If the probable cause is based on the statement of a person other than the officer, member of the attending staff, or professional person, such person shall be liable in a civil action for intentionally giving a statement which he or she knows to be false.

STATEMENT OF THE CASE

The Statement of Facts as presented by Petitioner in her Petition for Writ of Certiorari is adopted herein.

ARGUMENT

The decision of the Ninth Circuit Court of Appeals affirming the District Court's grant of Summary Judgment, thereby disposing of Petitioner's claims, is correct. There was no conflict or any other basis for further review by this Court.

Involuntary Civil Commitment Statutes, such as California *Welfare and Institutions Code* Section 5150 at issue in this case, serve a vital and important aspect of a state's police power, and have routinely been upheld by this Court. In proceedings below, the District Court properly challenged Petitioner's claims against a standard of "probable cause," and found that such "probable cause" was established to commence the involuntary detention process. That this probable cause was established on the basis of hearsay does not diminish its effectiveness.

In the Petition, Petitioner places great significance on the absence of a signature or telephone number on a particular declaration, yet completely overlooks the fact that other versions of the declaration were in fact signed. Even more significant, however, is the fact that Petitioner does not dispute that the information contained within that declaration is in fact correct, nor does she offer any excuse for failure to provide conflicting evidence at the time of the Summary Judgment motion.

Petitioner further argues that the involuntary commitment scheme itself is unconstitutional, and alleges torture and other specific events as evidence of mistreatment.

While there is no question that the individual rights of Petitioner, as well as anyone who may be subjected to an involuntary civil commitment, are compromised, such rights must be temporarily outweighed by the state's interest in promoting health and safety pursuant to its police powers. A state cannot safeguard the rights of all its citizens without occasionally interfering with the rights of particular individuals for the sake of the common good.

CONCLUSION

For the reasons set forth above, the Respondent herein submits that a Writ of Certiorari should not be granted in this case.

Respectfully submitted,

HOLLINS, SCHECHTER & FEINSTEIN
KENNETH C. JONES

Attorneys for Respondent
Kay Cantrell